

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIMON AND SIMON, PC, et al.,
Plaintiffs,
v.
ALIGN TECHNOLOGY, INC.,
Defendant.

Case No. 20-cv-03754-VC (TSH)

DISCOVERY ORDER

Re: Dkt. No. 174

The parties have a dispute about when Align should be required to produce its amended privilege log. ECF No. 174.¹ Through meet and confer, they have narrowed the dispute so that it now focuses on two items: (1) entries for all documents withheld from the productions Align has made over the last several months, and (2) various other documents that Align did not include in prior logs. Plaintiffs state that the first category includes approximately half of Align's total document production to date. Align states that the first category includes about 160,000 documents it recently produced in response to the Court's July 1, 2022 discovery order at ECF No. 140. Align states that this document production involves reviewing thousands of documents for the log and that its proposed November 18, 2022 deadline to serve an amended privilege log is 60 days after the date of the related document production.

Sixty days to prepare a privilege log for an associated document production of this size is reasonable, and the Court accepts Align's proposed November 18, 2022 deadline. The Court is sympathetic to Plaintiffs' desire to have the updated log sooner, but we have to be realistic about

¹ The filing is captioned as if it were also filed in 21-3269, and the first page states it is filed on behalf of the parties in 21-3269 as well as this case. However, the Court did not see that it actually was filed in 21-3269. Accordingly, the Court enters this order only in 20-3754.

1 what happened here: Plaintiffs raised a major dispute about Align's search terms approximately
2 two years after this lawsuit was filed. The parties trade accusations about whose fault that was,
3 but there is no denying that search terms are one of the foundational issues that are supposed to get
4 hashed out at the beginning of fact discovery. Waiting until late in fact discovery to raise the basic
5 issue of what search terms your opponent should run unavoidably poses problems. If you win, as
6 Plaintiffs did here, your opponent will need time to redo its document production and perform
7 related tasks like updating its privilege log. Plaintiffs' desire not only for Align to produce its
8 updated log by October 31, 2022 but also to resolve all privilege challenges to the updated log
9 before depositions begin in earnest is simply infeasible in light of the January 31, 2023 fact
10 discovery cutoff. Accordingly, the Court accepts Align's proposed November 18, 2022 deadline
11 for the updated log.

12 **IT IS SO ORDERED.**

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14 Dated: November 7, 2022

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16 THOMAS S. HIXSON
17 United States Magistrate Judge
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